

Message Text

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ACTION EUR-12

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FM USMISSION USBERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC 1811

AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L USBERLIN 2608

E.O. 11652: GDS

SUBJECT: FRG-SOVIET LEGAL ASSISTANCE AGREEMENT

TAGS: PGOV, PFOR, WB, GW, UR

REFS: A) BONN 20427, B) USBERLIN 2557

1. OFFICE OF SENATOR FOR JUSTICE TOLD US DECEMBER 19 THAT AT PRESENT TIME BERLIN COURTS HAVE NO OUTSTANDING REQUESTS FOR LEGAL ASSISTANCE IN CIVIL MATTERS WITH EITHER SOVIET UNION OR CZECHOSLOVAKIA. THERE ARE, HOWEVER, 90 PENDING CASES WITH POLAND, 70 OF WHICH INVOLVE MATTERS THAT POLISH COURTS HAVE INITIATED AND 20 OF WHICH INVOLVE MATTERS WHERE BERLIN COURTS ARE SEEKING AID. ALL THESE CASES HAVE PILED UP SINCE 1973 AT WHICH TIME BERLIN COURTS ACCEPTED INFORMAL ORDER FROM SENATOR'S OFFICE NO LONGER TO UTILIZE GOOD OFFICES OF POLISH MILITARY MISSION IN BERLIN, PRESUMABLY SO AS NOT TO PREJUDICE FRG'S EFFORTS TO NEGOTIATE LEGAL ASSISTANCE AGREEMENT WITH SOVIETS THAT WOULD PAVE WAY FOR MORE APPROPRIATE
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PROCEDURE TO BE INSTITUTED ALSO WITH POLES. ODDLY

ENOUGH, GOOD OFFICES OF CZECH MILITARY MISSION ARE STILL BEING SOUGHT AND ACCEPTED.

2. WE WOULD AGREE THAT BACKLOG OF 90 CASES BUILT UP IN LITTLE MORE THAN TWO YEARS IS SUFFICIENTLY SERIOUS PROBLEM TO WARRANT MAJOR EFFORT TO REGULARIZE SITUATION, AND WE HAVE NEVER DOUBTED FRG'S GOOD FAITH IN SEEKING TO NEGOTIATE AGREEMENT WITH SOVIETS TO THIS PURPOSE. ALL WE HAVE SAID IS THAT WE DO NOT ACCEPT, AND DO NOT BELIEVE THAT PUBLIC WILL ACCEPT, THAT FRG'S TENTATIVELY WORKED OUT ARRANGEMENT WITH SOVIETS IS OTHER THAN TRADEOFF OF CERTAIN AMOUNT OF STANDARD FRG-ALLIED LEGAL POSITION FOR PRACTICAL ARRANGEMENT. WE ARE NOT ADVERSE TO EFFORTS TO DIVIDE SUBSTANCE FROM PROCEDURE, BUT MERELY CAUTION THAT SUCH A DIVISION IS OFTEN MISLEADING. IF ENOUGH VARIANCES ARE OBTAINED BY EASTERN SIDE FROM ESTABLISHED PROCEDURES PURSUANT TO WHICH FRG REPRESENTS BERLIN'S INTERESTS AND KOMMANDATURA DECIDES WHETHER SECURITY AND STATUS ARE AFFECTED, THERE WILL NO LONGER BE ESTABLISHED PROCEDURES, AT LEAST WHERE SOVIETS ARE CONCERNED. THIS WOULD MEAN A SUBSTANTIVE CHANGE IN BERLIN SITUATION.

3. THERE IS, THEN, TO BE BLUNT, PREJUDICE TO FRG AND ALLIED POSITION IN THIS ARRANGEMENT AS IT NOW STANDS. WE WOULD AGREE THAT IT IS ULTIMATELY FOR FRG TO DECIDE IN THIS INSTANCE HOW MUCH PREJUDICE IS ACCEPTABLE. WE HAVE SEEN ENOUGH EXAMPLES JUST IN PAST MONTH (FRG-GDR HEALTH AGREEMENT, FRG-GDR TRANSIT IMPROVEMENTS PACKAGE) TO SUGGEST THAT PROCEDURAL QUESTION PRESENTED HERE IS NOT AN ISOLATED ONE BUT PART OF A CONSCIOUS SOVIET-GDR EFFORT TO DEVELOP INDEPENDENT TIES TO WEST BERLIN OF SORT CALLED FOR IN RECENT SOVIET-GDR FRIENDSHIP TREATY. WE WOULD THINK IT BEHOOVES FRG TO CONSIDER LONG-TERM IMPLICATIONS OF THIS AND IN PARTICULAR WHETHER IT IS BEING CONSISTENT WHEN IT ASKS NATO MINISTERS TO REAFFIRM REPRESENTATIONAL RIGHT AS WRITTEN IN QA AT SAME TIME AS IT ACCEPTS SERIES OF SPECIAL ARRANGEMENTS. IF FRG HAS DONE SO AND PREFERS NOT TO SEEK ADDITIONAL IMPROVEMENTS IN WHAT HAS BEEN WORKED OUT WITH SOVIETS, CONFIDENTIAL

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WE WOULD NOT ADVISE THAT ALLIES ATTEMPT TO BLOCK AGREEMENT. WE WOULD HOPE, HOWEVER, THAT FRG-ALLIED CONSULTATION PROCESS IS STILL SUFFICIENTLY CANDID TO PERMIT DISCUSSION OF BOTH TEXTS AND LONG-RANGE IMPLICATIONS.

4. SHOULD EMBASSY BELIEVE THAT CONSULATION PROCEDURES NO LONGER PERMIT ALLIES TO COMMENT ON SUBSTANTIVE

PROVISIONS OF THIS DRAFT AGREEMENT, OR ON ISSUE OF HOW THOSE PROVISIONS ARE TO BE SUBMITTED TO KOMMANDATURA, WE WOULD CONCUR THAT BK/O SUGGESTED IN PARA 10 REF A IS IDEA WORTH PURSUING. WE WOULD NOTE ONE PROCEDURAL PROBLEM, HOWEVER SOVIETS APPARENTLY INTEND TO MAKE THEIR STATEMENT TO ALLIES WITHIN A DAY OF CONCLUDING AGREEMENT IN BONN. IT WOULD BE DIFFICULT FOR ALLIES TO BE ARMED WITH PROPOSED BK/O ON SUCH SHORT NOTICE UNLESS BOTH IT AND SENATOR FOR JUSTICE'S REGULATION WERE PREPARED IN ADVANCE. BONN GROUP MAY WISH TO CONSIDER MAKING THIS POINT TO FRG. SHOULD IDEA BE PURSUED, IT WOULD ALSO BE USEFUL TO HAVE AGREED TALKING POINTS FOR USE BY ALLIED MISSIONS OR MOSCOW EMBASSIES WHEN SOVIETS DELIVER THEIR STATEMENT. GEORGE

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